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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Guam

Working paper prepared by the Secretariat

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I. General

1. Guam[1] is a Non-Self-Governing Territory administered by the United States of America with a locally elected Government. Basic information concerning the Territory is contained in a previous working paper submitted by the Secretariat (A/AC.109/2047, paras. 1-4). The people of Guam elect a Governor who serves a four-year term, 21 senators who serve two-year terms in a unicameral legislature, and a non-voting delegate to the United States Congress, who also serves a two-year term. The people of Guam became United States citizens in 1950 when the United States Congress enacted the Guam Organic Act, which established institutions of local government and made Guam an organized Territory. Guam is an unincorporated Territory, since not all provisions of the United States Constitution apply to the island.

2. The local judicial system is made up of a Superior Court and a Supreme Court led by judges appointed by the Governor. Local judges are subject to confirmation by the voters every six years. A United States District Court for Guam is headed by a District Court Judge appointed by the President of the United States.

3. Guam consists of a single island of approximately 212 square miles. It is located 3,700 miles west/south-west of Honolulu. The population of Guam in 1996 was estimated at 152,249. The annual rate of growth during 1990-1996 was about 2.3 per cent. If this rate of annual population growth continues, the population will reach 167,235 in the year 2000. The ethnic and racial composition of Guam's population includes 40 per cent Chamorro, 24 per cent Filipino, 15 per cent Caucasian, 5 per cent Micronesian and 16 per cent other ethnic groups.[2]

4. As a consequence of the implementation of separate Compact of Free Association agreements between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, since 1986, more than 13,000 migrants from these three Pacific Island nations freely associated with the United States and their American-born children have settled in Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands, straining the resources of the recipient States and territories.[3] According to the Office of Insular Affairs (OIA) in Washington, in 1997 there were 4,568 persons in this category in Guam. The territorial Government spends $9 million annually to provide public education to Compact migrants and their children. In order to address the situation, OIA has made technical assistance grants to Guam and other Compact Territories, with additional funding appropriated to the two island jurisdictions (Guam and the Commonwealth of Northern Mariana Islands) by the United States Congress.[4]

II. Constitutional and political developments

5. Detailed information on the Constitution, the territorial Government and the 1994 general elections is contained in the 1995 working paper prepared by the Secretariat (A/AC.109/2018, paras. 5-13). For recent developments concerning the Commonwealth status of Guam, see paragraphs 32 to 35 below.

III. Activities related to the withdrawal of military bases

6. According to a recent economic report prepared by the Bank of Hawaii, the military downsizing has largely been completed as called for by the 1995 base closings and realignment programme. The report characterizes Guam's bases as an important segment of the economy which, given the Territory's dependence on the unpredictable business of tourism, serve as a counterforce to market swings.[5]

7. Currently the United States Navy and the Air Force jointly maintain bases in Guam with 7,235 persons in uniform (excluding reservists or National Guard personnel), the majority of which is naval personnel.[6] With dependants, this number extends to 15,000. There are nearly 5,000 civilian employees and approximately 2,000 retirees. By early 1997, Guam had lost roughly 2,000 civilian jobs since the 1995 national base realignment and closures initiative, which largely affected the Navy. According to a recent estimate, Guam's services-dominated economy requires the creation of 2.5 jobs for each job in the military, in order to generate the same income benefit.[7]

8. In addition to jobs, direct income and benefits, the military contributes to the local economy as a retailer and collector of federal taxes for Guam. In 1996, total military exchange sales amounted to $141.1 million, roughly 8 per cent of the Territory's total retail sales. Since Guamanians do not vote in national United States elections, they are exempt from federal taxes, which are, however, collected from military personnel and other federal workers, who must file federal tax returns with the money reverting to the territorial treasury. In the fiscal year 1996, such taxes amounted to $46.2 million.[8]

IV. Economic conditions

9. A general overview of Guam's economy in the 1995-1996 period is contained in a previous working paper prepared by the Secretariat (A/AC.109/2086, paras. 9-18).

A. Gross island product

10. In 1996, gross island product (GIP) was $2.998 billion. According to the Guam Finance Commission, GIP in current dollars was $3.014 billion in 1994 and $2.999 billion in 1995.

11. Per capita GIP, a global comparative measure of standard of living change, indicated a downward trend in Guam since 1992. Per capita GIP peaked at $20,823 in 1992, $20,456 in 1993, $20,659 in 1994, $20,091 in 1995 and fell to $19,598 in 1996. Between 1994 and 1996, nominal GIP was reported as having declined by 0.7 per cent and total personal income by 1.1 per cent, with per capita GIP dropping 5.1 per cent and per capita personal income 5.5 per cent. Meanwhile, the employment data show that more people were working in Guam in 1995 and 1996 than in previous years. For the same period, total employment grew by 2.8 per cent and gross business receipts by 14.4 per cent.

B. Employment

12. In 1996, Guam reversed a three-year employment recession. The gain in payroll positions reflected the island economy's transition from near total dependence for decades on the United States military to a new reliance on the region's civilian market economy.[9]

13. Total civilian employment, including dependants of military personnel and civilians working for the military, peaked in 1992 at 69,569 persons employed. Total civilian employment dropped to 68,420 in 1993, 66,570 in 1994 and to a low of 65,220 in 1995. In December 1996, it rose again to 68,440, only 1,129 employees below the previous peak. The gains in employment were important, but were not enough to reduce Guam's overall unemployment rate, which was close to 9 per cent in 1997.[10]

14. Total gain in employment in 1996 (from 1995) was 3,220 persons employed, or a 5 per cent increase. Most of the gain (2,940) occurred in the private sector, which accounts for 72 per cent of all employment. Private sector activity not only absorbed losses occurring in the public sector (largely the result of federal government downsizing) but created new positions to absorb some of the new entrants to the labour force.

15. Owing to the non-availability of data series on GIP by industry, the employment data are useful in describing the structure of Guam's economy. The services, retail, construction, and transportation and utilities sectors were the largest employers on the island, a consequence of the overwhelming importance of tourism to the civilian economy.

16. Of all eight sectors, five showed increases for 1996. The largest gain by sector, 1,610 employees in 1996, was recorded in the largest sector services. Transportation and utilities gained 910 workers, retail sales 440. Wholesaling gained 100 workers. Although agriculture added only 50 jobs, this was a 17.2 per cent gain for this tiny sector and the first gain after two years of job losses. In the total employment by sectors in 1996, services' share was 22.6 per cent, Government of Guam 20.2 per cent, retail 19.0 per cent, construction 11.1 per cent, transport and utilities 8.8 per cent, finance, insurance, real estate 3.9 per cent, wholesale 3.3 per cent, manufacturing 2.5 per cent and agriculture 0.5 per cent.[11]

C. Wages

17. A significant development in 1996 was the first drop in a decade in nominal (in current dollars) wages in Guam's private sector. Average weekly earnings for 1996 were $351.387, down 1.5 per cent from 1995. In contrast, government employees' average weekly earnings rose by 1.2 per cent from $600.57 in 1995 to $607.73 in 1996, widening the gap between the wages in the government and private sectors. The available data points to the existence of two-tier wage economy of Guam, where government employees now earn, on the average, nearly three quarters more than those in the private sector.

D. Public finance

18. The Territory's general fund has run deficits during most of the last 10 years, with the shortfall increasing in 1992-1994 from $51 to $184 million annually. By the end of 1996, according to the Guam Finance Commission, the deficit was down to approximately $90 million.[12] Deficits have resulted from a steady rise in government spending at the same time that the tax base has fluctuated with changes in business cycle.[13]

E. Trade

19. Business receipts showed marked improvement in 1996. Total business receipts (subject to gross revenue tax) rose by 7.8 per cent in 1996 to $5,612.9 million. This was the largest annual gain in four years. Wholesale receipts had the largest gain at 44.5 per cent, followed by retail sales at 10.1 per cent and services at 8.2 per cent.[14]

20. In 1995, several large retailers, including K-Mart and Cost-U-Less opened outlets in Guam, causing a 15-20 per cent drop in the prices of some household items. Total retail sales are approaching the $2.0 billion level, having reached $1.8 billion in 1996. However, the growth of the retail market in Guam is limited by demographic and income factors of the Territory's own population and the arrival of tourists on the island.

F. Construction

21. The total dollar value of building permits in 1996 dropped nearly 23 per cent to its lowest level in nearly a decade. The 1996 total of $298.2 million was the lowest since 1988. Despite the downturn, building industry continues to be a major employer in the Territory.

22. Public permits dropped 17.6 per cent to $86.7 million in 1996, the lowest since 1992. Permits for commercial and industrial space dropped the most in 1996, 54.7 per cent to $50.1 million, compared with peak $100.7 million in 1995. Residential permits dropped 13.8 per cent from $100.0 million in 1995, to $86.2 million in 1996.

G. Tourism

23. The visitor count in 1996 was 1,362,600 arrivals, almost the same number as compared with 1,361,460 in 1995. Most of the visitors were Japanese tourists. In 1990, Japanese tourists made up 82.8 per cent of total arrivals, dropping to 70.1 per cent in 1993. Japan's share of Guam's tourist market rose from 71.2 per cent in 1992 to 75.5 per cent in 1996.

24. Hotel inventory in 1996 exceeded 7,000 rooms for the first time, reaching a record 7,052, a gain of 600 rooms for the year. A total of 1,351 hotel rooms were either under construction in 1996-1997 or were expected to be completed in the next two to three years, according to the Guam Visitors Bureau. There are estimates that Guam's hotel inventory will double in the next five to six years, which would mean a capacity for 2.4 million visitors by 2002.[15]

H. Ship repair facility

25. An important step towards making the Territory a centre for civilian ship repair and distribution is the turnover of the ship repair facility which the United States Navy operated for decades in Guam. The facility has an infrastructure that would otherwise cost tens of millions of dollars to build. The future role of the facility and the capital needed to turn a former United States Navy shop into a civilian enterprise are currently under consideration by the Government of Guam.

I. Utilities

26. The Government of Guam is making important efforts to privatize utilities. The Guam Power Authority (GPA) has already contracted with Honolulu-based Hawaiian Electric Industries to help upgrade GPA generating and distribution capacity.

J. New airport terminal

27. Guam's new airport terminal opened partially in September 1996. Completion of the new terminal will facilitate Guam's efforts to market itself as a major regional destination.

V. Banking and finance

28. Information on banking and finance is contained in a previous working paper prepared by the Secretariat (A/AC.109/2086, paras. 27-28).

VI. Land issue

29. Information on the land issue is contained in a previous working paper prepared by the Secretariat (A/AC.109/2086, para. 29). In his statement before the Fourth Committee on 10 October 1997 (see A/C.4/52/SR.6), Mr. Robert Underwood, Guam delegate to the United States Congress, stated that the current process concerning the return of surplus federal lands to the Government of Guam in fact

allowed federal agencies to bid for those excess lands ahead of Guam.

VII. Social conditions

30. Information on social conditions is contained in a previous working paper prepared by the Secretariat (A/AC.109/2086, paras. 30-40).

VIII. Future status of the Territory

A. Draft Commonwealth Act

31. Detailed information on the political status referendum of 30 January 1982, and on the draft Commonwealth Act, as well as on the negotiations related thereto between the territorial Government and the administering Power during the period from 1986 to 1994 are contained in previous working papers prepared by the Secretariat (A/AC.109/1192, paras. 19-37, and A/AC.109/2018, paras. 74-83). Additional information for 1995-1997 is contained in a previous working paper prepared by the Secretariat (A/AC.109/2086, paras. 42-44).

32. On 29 October 1997, the House Committee on Resources of the United States Congress held hearings on the Guam Commonwealth bill (H.R.100) introduced in January 1997 by Guam's delegate to the United States Congress, Mr. Robert Underwood. The purpose of the bill was to create "the Commonwealth of Guam". Guam was represented at the hearings by a delegation headed by the Governor of Guam, Mr. Carl T. C. Gutierrez. The delegation included former Governors of Guam, members of Guam Legislature, the Chief Justice of Guam and Guam's non-governmental organizations.

B. Position of the territorial Government

33. In a statement for the record submitted by the Guam Commission on Self-Determination to the United States House of Representatives Committee on Resources on 29 October 1997, the Commission defined Guam's process of decolonization in the following way: "The Guam Commonwealth Act creates a mechanism whereby the United States Congress would approve of the Constitution of the Commonwealth of Guam including a provision which recognizes the right of the Chamorro people to select an ultimate political status. The language of the Commonwealth Act characterizes 'Chamorro' as persons (or descendants of persons) who were born in Guam prior to August 1, 1950. It is anticipated that the exercise of Chamorro self-determination would be a one-time vote on an ultimate political status for Guam. Guam's decolonization would result from the implementation of a status selected by the Chamorro people."[16]

C. Position of the administering Power

34. In his statement before the House Committee on Resources on 29 October 1997, the Administration's Special Representative for the Guam Commonwealth, Interior Deputy Secretary John Garamendi, summarized the position of the administering Power in the following way:

> "... our first recommended option is to invite Congress to join in the Guam status deliberations to help formulate comprehensive Commonwealth legislation that is mutually agreeable to the parties. Participation by Congress, which is constitutionally vested with plenary powers over territorial matters, would add significant momentum in bringing this matter to closure. ...
>
> "A second alternative, which may, but does not necessarily have to be, exclusive of the first, would be to pursue Federal policy changes that Guam has proposed which are supportable by the Administration, many of which are not inherent in the definition of the island's constitutional status. We could do this through discrete and separate legislation, perhaps having individual bills for each issue considered. ... The Administration is willing to support and proactively engage Guam and Congress in the development of separate bills that would address issues such as application of particular Federal immigration, labour, transportation, trade and tax policies to the island."[17]

D. Action by the General Assembly

35. On 10 October 1997, in their statements before the Special Political and Decolonization Committee (Fourth Committee) (see A/C.4/52/SR.6), the elected representatives of Guam and the representatives of Guam's non-governmental organizations participating in the hearings on decolonization emphasized that Commonwealth status for Guam was an interim measure as it did not meet the internationally recognized standards for decolonization, nor was it independence, free association or full integration; it would provide a transitional Government which would

facilitate the eventual decolonization of Guam. The petitioners from Guam urged the United Nations to reaffirm the right of Guam's indigenous people, the Chamorros, to self-determination and asked members to restore the language found in resolutions adopted in the past on Guam to the draft resolution being considered by the Committee. In resolutions adopted in 1994 and 1995, the General Assembly recognized the Chamorro people's right to self-determination. The petitioners said that the new wording in the draft resolution on Guam altered the implications of the decolonization process for the Chamorro people.

36. The representative of the United States, speaking in exercise of the right of reply, said that the United States Government and the representatives of Guam were pursuing the same objective, namely, the attainment of free self-determination by the island's people. Their positions differed with regard to who should be entitled to participate in that process. It was the view of the United States of America that the right to self-determination of Guam should be exercised by all the people of Guam, rather than just one part of the population. It appeared that those who had spoken at the current meeting did not recognize the civil rights of the majority of the population of Guam. It was difficult to imagine that the United Nations would associate itself with any exercise of the right to self-determination from which the majority of the people affected by the outcome would be excluded on grounds of ethnicity. In the United States of America, all persons were equal before the law. The Constitution did not allow for elections from which a portion of the population was excluded on ethnic grounds. Furthermore, his delegation could not endorse the view that the rights of one group of people should take precedence over the rights of another. The United States of America would not support any programme or project which excluded Guamanians who were not Chamorros. His Government was committed to working with all the peoples of Guam with a view to resolving its political status in keeping with the principle of self-determination. Nevertheless, the ultimate outcome of the process must be reached in conformity with the laws of the United States of America and the principle that self-determination must be exercised by the citizenry as a whole.

37. On 10 December 1997, the General Assembly adopted without a vote resolution 52/77 B, section VI of which particularly concerns Guam.

Notes

[1] The information contained in the present working paper was derived from published sources, including Internet sites.

[2] *Guam economic report: September 1997*, Bank of Hawaii, p. 3.

[3] Pacific Island Development Program/Country Policy Information System, 16 January 1998.

[4] Ibid. The representative from Guam, Mr. Robert Underwood, questioned figures in the Office of Insular Affairs report, putting the number of Compact migrants in Guam at 8,000 (Pacific Island Development Program/Country Policy Information System, 19 January 1998).

[5] Ibid., p. 9.

[6] In 1993-1994, total uniformed personnel strength on Guam was almost 11,500 persons (see *Guam economic report: September 1997*, p. 18).

[7] Ibid.

[8] Ibid.

[9] Ibid., p. 9.

[10] Ibid.

[11] See pie chart in *Guam economic report: September 1997*, p. 14.

[12] Ibid., p. 18.

[13] Ibid.

[14] Ibid., p. 22.

[15] Ibid.

[16] *Statement for the record: Guam Commission on Self-Determination*. House Resources Committee (105th Congress). Hearing on H.R. 100 The Draft Commonwealth Act, October 29, 1997, p. 11. (Copy was provided to the Secretariat by Guam Commission on Self-Determination in May 1998.)

[17] Testimony of Interior Secretary John Garamendi, the Administration's Special Representative for the Guam Commonwealth, 29 October 1997 (copy provided to the Secretariat by Guam Commission on Self-Determination on 1 May 1998).

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New Caledonia

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I. General

1. New Caledonia is located in the Pacific Ocean, about 1,500 kilometres east of Australia and 1,700 kilometres north of New Zealand. It comprises one large island, known as Grande Terre, and smaller islands known as the Loyalty Islands (Ouvéa, Maré, Lifou and Tiga), the Bélap Archipelago, the Isle of Pines and Huon Islands. There are also several uninhabited islands to the north of the Loyalty Islands. The area of Grande Terre is 16,750 square kilometres and that of the Territory 19,103 square kilometres. Nouméa, the capital, is located in the south of Grande Terre.

2. According to the 1996 census, the population was 196,836, comprising known indigenous Melanesians known as Kanaks (42.5 per cent); persons of European origin, mainly French (37.1 per cent); Wallisians (8.4 per cent); Polynesians (3.8 per cent) and others, mainly Indonesians and Vietnamese (8.2 per cent). The rate of population growth in 1997 was estimated at 1.68 per cent. About 60 per cent of the population is Catholic, 30 per cent Protestant and 10 per cent other religions. The official language is French and about 28 Melanesian-Polynesian dialects are spoken.

3. The Territory is divided into three provinces, South and North (on Grande Terre) and the Loyalty Islands. Each province has an elected Assembly which is responsible for local economic development, land reform, cultural affairs and primary education. Together, the members of the assemblies constitute the 54-member Territorial Congress, which is responsible for the territorial budget and fiscal affairs, infrastructure, communications and public service of national interests. The Territorial Congress is composed of 15 members from North Province, 32 members from South Province and 7 members from the Province of the Loyalty Islands. Members are elected for terms of six years by universal suffrage. The French High Commissioner, currently Mr. Dominique Bur, forms the territorial executive. He is assisted by the presidents of the assemblies and by the President of the Territorial Congress. Local government is conducted by 32 municipalities.

4. The legal system of New Caledonia follows the French system. In addition, in order to safeguard Kanak tradition, there are also eight customary regions, each with its own Consultative Customary Council, as well as a Territory-wide Customary Council. The Consultative Customary Council provides advice in matters of customary law and land law. Magistrates preside over the decentralized lower courts. The Court of Appeal is based in Nouméa and there is access to the higher appeal court of France in certain matters.

5. There are two principal political groupings and numerous small parties. The two groupings in question are the Rassemblement pour la Calédonie dans la République (RPCR) and the Front de libération nationale kanak et socialiste (FLNKS). The constituents of FLNKS are the Union calédonienne (UC), the Parti de libération kanak (PALIKA), the Union progressiste mélanésienne and the Parti socialiste calédonien (PSC). Elections were held in July 1995; the next elections will be held in July 2001.

6. The Matignon Accords of 1988 (see A/AC.109/1000, paras. 9-14, and A/AC.109/2028, paras. 5-9 and annexes I-IV, VI and VII) provide for a 10-year period of economic and social development and a self-determination referendum to be held in 1998.

7. New Caledonia's economy is dominated by the nickel industry. The Territory has more than 20 per cent of the world's known nickel resources. In recent years the economy has suffered because of a depressed international demand for nickel, the principal source of export earnings. Tourism is now regarded as the second most important industry. Only a small portion of land is suitable for cultivation, making agricultural production relatively low; food accounts for 25 per cent of imports.

II. Developments

8. Talks on the future political status of New Caledonia resumed in Paris on 16 February 1998 after a two-year hiatus. On 1 February 1998, to pave the way for the resumption of talks, an agreement was signed permitting an exchange of nickel reserves between the French state-owned Eramet and the Kanak-controlled Société minière du Sud-Pacifique (SMSP). FLNKS had made the provision of nickel resources for its proposed smelter project in North Province, provided for by the Eramet-SMSP agreement, a precondition for the resumption of political talks. The announcement of the agreement between Eramet and SMSP led to the dismantling of barricades and roadblocks set up by FLNKS supporters throughout the Territory. The roadblocks had been erected in case an agreement was not reached by the 31 January 1998 deadline established by FLNKS, which had warned that, if the deadline was missed, mass mobilization of its supporters would follow. Alain Christnacht, special adviser to the Prime Minister of France, visited New Caledonia on the occasion of the signing of the nickel reserves agreement and was reported to have met with political leaders in the Territory to talk about the resumption of negotiations.

9. On 21 April 1998, after two months of intense negotiations, representatives of the Government of France and of RPCR and FLNKS signed an agreement regarding the future status of the Territory.

10. On the same day, the Prime Minister of France issued the following communiqué:

"The delegations of RPCR, FLNKS and the Government have today, at Nouméa, initialled a document that reflects the agreement they have reached to implement a 'consensual solution' which will follow up the arrangements made under the Matignon Accords of 1988.

"Talks began in Paris on 24 February 1998, under my chairmanship, and were subsequently led by Mr. Jean-Jack Queyranne, Minister for Overseas Departments and Territories. The talks continued in Nouméa, starting on 15 April, with the representatives of the Government, Mr. Christnacht and Mr. Lataste.

"The Accord includes a preamble which describes the consequences of colonization for the Kanak identity and affirms the determination, after the ten years of the Matignon Accords, 'to embark on a new stage characterized by full recognition of the Kanak identity, prior to the reformulation of a social contract between all the communities living in New Caledonia and by a sharing of sovereignty with France, on the way to full sovereignty'.

"A 'policy document' was also approved.

"This document sets out, first, the arrangements for taking the Kanak identity more broadly into account in the political organization of New Caledonia, by an improvement in the status of customary law, better recognition of the role of the customary authorities, based in particular on the creation of a customary Senate, the protection and development of the cultural heritage, measures relating to the system of land ownership, and the adoption of identity symbols.

"The institutions of New Caledonia will be modified. A Government of New Caledonia will be appointed by the Congress on the basis of proportional representation.

"The electorate for the elections to the provincial assemblies and to the Congress will be limited, as provided for in the Matignon Accords.

"There will be a considerable transfer of powers from the State to the New Caledonian institutions once the new institutions have been brought into operation in the case of some, and during a second stage in the case of others. At the end of the process, the State will retain only sovereign powers.

"A plan to promote the economic and social development of New Caledonia will be defined in special agreements.

"The plan will deal mainly with training. During this period, New Caledonia will be brought into a position where it will have sufficient mastery of the main tools of its development. Measures will be taken to promote the access to local employment of persons established in New Caledonia.

"Before the end of the year, this whole plan will be submitted to the populations of New Caledonia concerned, in a referendum as provided for in article 2 of the Referendum Act of 9 November 1988.

"In 20 years' time, a new referendum will be held. It will deal with the transfer of sovereign powers to New Caledonia, access to the international status of full responsibility, and the organization of the citizens by nationality. This referendum could take place after 15 years if the Congress should decide to move it forward.

"Consultations on this agreement will now be undertaken in New Caledonia with political, customary, economic and social organizations.

"The Government will embark on the preparation of the legislation necessary for the implementation of the Accord and, *inter alia*, will propose a draft constitutional act to the President of the Republic.

"I should like to congratulate all those who have contributed to this Accord.

"They have been able to narrow the differences between their points of view and to take a step towards the future. In particular, I commend the heads of the two delegations, Mr. Lafleur of RPCR and Mr. Wamytan of FLNKS, as well as all the members of the delegations which have worked tirelessly with the representatives of the Government over the past two months.

"Ten years after the Matignon Accords, a new era of peace and development is beginning in New Caledonia.

"I shall be in New Caledonia on 4 and 5 May next so that I may personally put my signature to this Accord and pay tribute to Jean-Marie Tjibaou during

the ceremonies which will mark the inauguration of the Cultural Centre that will perpetuate his name."

11. On 26 April, an extraordinary session of the pro-independence FLNKS unanimously ratified the agreement and authorized its signature.

12. On 5 May, the formal signing ceremony of the Nouméa Accord was held in New Caledonia. (The full text of the Accord is annexed to the present report.) Prime Minister Lionel Jospin signed the Accord, as did the Secretary of State for Overseas Territories, Jean-Jack Queyranne, the President of RPCR, Jacques Lafleur, and the President of FLNKS, Rock Wamytan. Speaking at the ceremony, the Prime Minister stated:

"... These 10 years have indeed gone by more quickly than was imagined at the beginning of the process. Time seemed to accelerate at the end of the period and many felt that there had not been enough time to accomplish everything that should have been accomplished.

"However, a considerable amount of work has been done. The time that has gone by should not make us forget – as the memories of past years fade – the distance we have travelled.

"The goals established have essentially been achieved. The Territory has unquestionably made progress; New Caledonians have learned to live and work together better, they have learned new responsibilities, they are better trained, their economy is more solid.

"The Matignon Accords have thus opened up a new era for the Territory. And those who signed those Accords, together with Michel Rocard, who was both their inspirer and mediator, can take pride in the fact that they have laid the foundations for a new Caledonia.

"The 10 years following those Accords were also to be devoted to persuading the New Caledonians to vote, at the end of the process, for or against independence.

"That question, which had so deeply divided the population of the Territory, had been postponed until the end of the 10-year period, during which each side could hope that the development of New Caledonia would lead the electorate to adopt their point of view.

"You, Mr. Jacques Lafleur, were the first to realize that 10 years was too short a time for opinions to develop sufficiently, that a vote on self-determination, as provided for in the Referendum Act, would have had results no different from the earlier votes and thus opinions would harden at the very time when the institutional system established by the Matignon Accords was coming to an end. There was therefore a risk of regression.

"You therefore put forward, in 1991, the idea of a 'consensual solution' the adoption of which would be jointly advocated by the two local partners to the Matignon Accords.

"That approach turned out to be a fruitful one. Your proposal was approved in principle by FLNKS and by the State. Each agreed that in order to continue to build together the New Caledonia of tomorrow, a referendum that drew the parties together was better than a referendum that divided them.

"There remains the task of finding this consensual solution, starting from positions which are at the outset quite far apart. FLNKS remains the standard bearer of a demand for independence, based on the particular legitimacy of the indigenous people, for which many men and women have waged a difficult struggle.

"RPCR believes that the maintenance of sufficiently strong ties to France would be a guarantee of peace and prosperity.

"The desire to find, through negotiation, a compromise solution in which no one would renounce his ideals remained strong among those who were still partners to the Matignon Accords. They had grown accustomed to working together. Political life had, of course, also brought its share of dissensions, new rifts became apparent and new problems arose. It became necessary, while preserving the spirit of the Matignon Accords, to work out a method of discussion adapted to the new circumstances of the 1998 discussion.

"...

"No one should view these 20 years [the period of shared sovereignty] as a period of passive waiting. The Nouméa Accord will not bear fruit in 20 years unless the Government, the political parties, the institutions of New Caledonia and all those here who are concerned with the fate of this country become personally involved in its implementation.

"No responsible person can doubt that there will be difficulties and disputes and that new questions, unforeseeable today, will arise. That is why I attach great importance to the committee of signatories which

is to take part in preparing the legislation and monitoring the implementation of the Accord.

"The Nouméa Accord should make it possible to meet the aspirations of the population. Beyond the expectation of identity and political aspirations, there are many unsatisfied needs here. Too many inhabitants do not yet have decent living conditions, many do not have work. There are many young people here. They ask themselves, and they will ask us with growing insistence, what the Accord will change in their daily lives, what future we are preparing for them. The success of the Nouméa Accord will also be judged by the quality and strength of the answers given to these questions."

13. Also at the signing ceremony, the President of FLNKS made the following statement:

"FLNKS has consistently stated its commitment to negotiating a viable and acceptable solution for New Caledonia. We repeated this constantly, even during the difficult times when all signs seemed to point straight to the self-determination referendum. In July 1997, at the meeting of Melanesian countries, in Fiji, FLNKS had already expressed its wish to achieve a solution in principle by 4 May 1998, the date chosen for the inauguration of the Tjibaou Cultural Centre. This date had also been proposed for the twelfth Melanesian Spearhead Group Summit in Nouméa. This was not possible for various reasons, but it is important that the idea of inviting the countries of the region to witness this signing ceremony was eventually agreed to by the Government. Further, when negotiations reopened in Paris on 22 February 1998, FLNKS officially announced its intention to conclude an agreement by this symbolic date of 4 May 1998.

"... Each side worked towards this goal with goodwill, despite fundamental differences, without renouncing its convictions or discrediting itself. Major concessions were made by both sides to preserve peace and harmony in the Territory. As Saint Thomas Aquinas said, as quoted by Edgard Pisani in a recent article on the status of Quebec: 'Agreement does not stem from identical thoughts but from identical wills'. And there was indeed a common will to arrive at a solution, starting from positions that were originally diametrically opposed. What do those who wish to remain within the French Republic and those who are fighting for their country's independence have in common? Not much, yet the Gordian knot was cut thanks to the political acumen of the two local partners, who focused on what really mattered in the interests of our communities.

"These Nouméa Accords constitute a specific and balanced solution, worked out by the three partners. Moreover, this arrangement will no doubt become a reference document for political scientists, and also be of use in resolving conflicts of legitimacy, as experienced by our country. This arrangement is, of course, not perfect and additional provisions will be needed to extend its scope and range. Specific problems call for tailor-made solutions, and this is what the parties involved have said and repeated constantly over the past few months, and it is fair to say today that this solution is well adapted to the complexity of the New Caledonian problem, which for once has been satisfactorily addressed. This is neither the umpteenth set of institutional arrangements, nor an unsuitable remedy; it is definitely the construction of a country destined to evolve politically.

"This founding pact makes it possible for all people of New Caledonia to envisage a new way of wanting to share their future. The Matignon Accords laid the groundwork for this common will, and the Nouméa Accords will strengthen the foundations and apply the finishing touches to the final form of this people, which shares the same destiny: this was the gamble on intelligence that began in 1988 and which continues today through our signatures.

"From now on, we must make these Accords live and give them a soul. These Accords will be what we make of them. The spirit of the Accords must prevail throughout this period of at least three terms of elected office, which is opening up before us. To some, this may seem a long time to wait before we reach our goal, while for others it may be too short a respite before a leap into the unknown. FLNKS is gambling that, at the end of this period, the options will no longer be conflicted or contradictory but parallel, as a prelude to the emergence of this future people now defining itself, which will, at that time, have to come to an agreement on its partnership with metropolitan France.

"For this purpose it is necessary, as in any gamble, even one on intelligence, for the dice not to be loaded. Each of the signatories to these Accords must play the game according to the rules, and the original handicaps must not be increased with time. We must capitalize upon the experience of the

Matignon Accords. When we met in Paris last February, FLNKS said it had mixed feelings about the outcome of the Accords. Indeed, while peace may have been restored, the new balance was not struck as effectively as it might have been, in view of the major resources made available to the Territory to work in that direction. A whole segment of the population of New Caledonia, especially the young, feel they have been 'forgotten' by these Accords, while others were growing richer; hence the feelings of frustration that breed future revolution.

"I call on the State to exercise its responsibility and accompany us down this path towards political and economic emancipation. The State has held the key to sovereignty in this Territory since 24 September 1853. The Kanak people is for the moment under French sovereignty, despite the fact that right is on its side, the right of colonized people to self-determination, a right recognized by the United Nations. That right remains inalienable and will continue to apply until we acquire fully sovereignty. Even though the Accords do not specifically say so, this is outlined in the evolutionary mechanism inherent in the process that we will begin to implement in 1999.

"We have agreed to share this right with the other communities of the Territory, within the special restricted electorate as defined for the concluding polls in 1998 plus however many years it takes. The fact remains that, even if our vision is to see a future people take shape in this country, the original Kanak people remains the core on which our common future will be based. The Kanak people will guarantee stability in the future, once its rights have been rehabilitated and recognized. In the meantime, its right as a colonized people must be preserved, especially by the United Nations, which proclaimed the decade 1990-2000 to be the International Decade for the Eradication of Colonialism.

"This original people was joined by other communities, conquerors or founders, who believe that they have made New Caledonia what it is today, and by other more recent arrivals who wish to adopt this country as their own. Their right to live here must, of course, be respected and guaranteed. The State must also guarantee a balance between the various layers of New Caledonia society in order to help us achieve emancipation together. And here I should like to quote what former President François Miterrand said during his third visit to Tahiti in May 1990: 'It would be pointless today to review the responsibilities, mistakes or truths of the past, but we would be remiss if we did not act, today and tomorrow, to ensure the success of the endeavour we have undertaken together'. For us, this endeavour is the Nouméa Accords, which must now live. The State has a major role to play, from the point of view of emancipation, to lead us to our age of political majority and to the exercise of power in the future. I say this because we are all too aware of the examples of a certain policy of the State towards its former colonies in Africa, which have turned them into banana republics. Clearly we want none of that!

"To conclude, I should like to direct my words to the Kanak people and say that these Nouméa Accords will gradually enable us to claim our right to sovereignty and independence as the binding factor of an emerging people. We must now get down to work and give substance to this dream inside us. Independence is not 20 years down the road; we must begin to build it today. These strong words are the same as those addressed to me this morning on Uvéa by those who suffered the most from the 1988 events, the people of Gossanah. They kept their faith in their political leaders, despite the enormous number of victims of the events of 5 May 1988 and 4 May 1989. This heavy burden must have weighed on the mind of Jean-Marie Tjibaou during the Matignon negotiations: 'work, watchfulness, constancy and determination'. This should be our motto in order to build a common future for the well-being of our communities."

14. The President of RPCR, speaking at the signing ceremony, said:

"... The objective of re-establishing civil peace was achieved and has been preserved for 10 years. At the time, it was unexpected and few people believed in it. This is the first gain under these Accords. The climate of peace has become a matter of routine and the youngest among us cannot even imagine what we experienced during the years from 1984 to 1988.

"The Matignon Accords also provided that this 10-year period would be used in order to 'create conditions in which the populations could freely and assured of their future, choose their destiny'. The Referendum Act of 9 November 1988 thus provided that a vote on self-determination should be held before the end of this year.

"It very quickly became apparent that this 10-year period, which seemed to us so long in 1988, would in fact be insufficient for a common vision of the future to be created and to take root. Under these

conditions, the holding of a vote on self-determination in 1998 might once again divide New Caledonians and take us back 10 years.

"During the years following the signing of the Matignon Accords, the mutual recognition on the part of the communities led the Territory's political leaders to work together, both in the Congress and in the provinces, in a spirit of partnership and close cooperation. This gave rise to the idea of seeking a consensual solution, which some have called 'a negotiated solution' or 'a shared agreement' and on the principle of which all the local partners and the State speedily agreed. Such a solution, if it were to be found, would be submitted to a ratification referendum, which would replace the vote on self-determination.

"But the road towards making this solution acceptable to the largest number of people was a long and difficult one. In particular, the advancement of economic and financial interests as preconditions has, in the past two years, very much complicated this process. As the 1998 deadline drew closer, the feeling of anxiety on the part of the population increased, becoming one of real anguish.

"... This Accord was made possible only through the concessions, at times painful, made by both sides, but it does not represent any renunciation by the local partners of their deeply-held beliefs. On the other hand, the extension of the Matignon Accords reflects the sincere expression of a desire to live together and build a New Caledonia in which each side is recognized.

"This means that the new institutions, the new organization, resulting from this accord should be used to bring together all New Caledonians in a common endeavour in order to lay the foundations for a mutually dependent united society in which the Melanesians will have the full place to which they are entitled. In particular, there will be a need for all parties to devote their energy now to creating new wealth and exploiting the advantages and resources of our Territory. This is the essential condition for ensuring that the work done over the past 10 years to create jobs, bringing about a realignment and undertake activities to help the most disadvantaged among us can be continued and stepped up."

15. While in Nouméa, the Prime Minister attended the inauguration ceremony of the Jean-Marie Tjbaou Cultural Centre and held separate meetings with representatives of FLNKS and RPCR.

III. Consideration of the question by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

16. The Special Committee considered the question of New Caledonia at its 1470th meeting, on 6 June 1997. At that meeting, the representatives of Fiji and Papua New Guinea introduced a draft resolution on the question (A/AC.109/L.1861). The representatives of Mali and the Islamic Republic of Iran proposed replacing the word "provincial" with the word "territorial" in operative paragraph 7 of the draft resolution. At the same meeting, having waived rule 120 of the rules of procedure of the General Assembly, the Special Committee adopted draft resolution A/AC.109/L.1861, as orally revised, without a vote. On 30 June 1997, the text of the resolution (A/AC.109/2093) was communicated to the Permanent Representative of France to the United Nations for the attention of his Government.

B. Special Political and Decolonization Committee (Fourth Committee)

17. At its 9th meeting, on 27 October 1997, the fourth Committee heard a statement by Mr. Winslow of FLNKS (see A/C.4/52/SR.9).

18. At the same meeting, the representative of France stated that he wished to inform the Committee of the situation in New Caledonia since the signing of the Matignon Accords, while at the same time reiterating his delegation's reservations about the competence of the Committee in matters relating to New Caledonia. He said that, during the preceding nine years, there had been great changes in the political, economic and social situation in New Caledonia. All the parties concerned had shown goodwill in working towards peace and a better future in the spirit of the 1988 Matignon Accords, in accordance with which progress had been made towards self-determination, decentralization and redressing economic and social

imbalances with a view to preparing for the 1998 referendum. He also indicated that, since the signing of the Matignon Accords, New Caledonia's relationship with its neighbours had been transformed and contacts at all levels had increased. The Territory would continue to play an increasingly important role in the South Pacific region, and visits from regional delegations were increasing, which was an encouraging sign of support for the Matignon Accords. The dialogue with the signatories to the Matignon Accords would be broadened to include all political, social and economic actors in the Territory.

19. He expressed satisfaction that the draft resolution before the Committee had taken into account positive changes in the Territory and the dialogue occurring there. Once again, his delegation would not object to the draft and would not request a recorded vote. He stressed, however, that it was the opinion of his delegation that Article 73 of the Charter of the United Nations did not encompass New Caledonia or any other of his Government's overseas Territories or departments, and that only the administering Power had the right to decide which Territories could be considered non-autonomous; no resolution of the General Assembly could modify the Charter in that area or give the Assembly any jurisdiction. His delegation therefore remained of the opinion that the question of New Caledonia was a question of domestic jurisdiction as set out in Article 2, paragraph 7, of the Charter.

20. Also at its 9th meeting, the Committee adopted without a vote the draft resolution on New Caledonia contained in document A/52/23 (Part V).

C. General Assembly

21. During the general debate held at the 28th plenary meeting of the General Assembly, on 7 October 1997, the representative of Papua New Guinea referred to the question of New Caledonia in his statement (see A/52/PV.28).

22. At its 69th plenary meeting, on 10 December 1997, the General Assembly adopted without a vote resolution 52/76, entitled "Question of New Caledonia".

Annex

Nouméa Accord

On 21 April 1998, representatives of the Government of France, the Rassemblement pour la Calédonie dans la République (RPCR) and the Front de libération nationale kanak et socialiste (FLNKS) signed an agreement regarding the future status of the Territory. The formal signing ceremony was held at Nouméa on 5 May 1998. The text of the Accord is as follows:

Agreement on New Caledonia

[Original: French]

Preamble

1. On 24 September 1853, when France took possession of Grande Terre, which James Cook had named "New Caledonia", it appropriated a territory in accordance with the conditions of international law recognized at that time by the nations of Europe and the Americas, without establishing legal ties with the indigenous population. The treaties signed with the customary authorities in 1854 and subsequent years did not constitute well-balanced agreements; they were, in fact, unilateral acts.

However, this Territory was not empty.

Grande Terre and the islands were inhabited by men and women who were known as Kanaks. They had developed their own civilization, with its traditions and languages and the customs which structured their social and political reality. Their culture and view of life were expressed in various forms of creativity.

The Kanak identity was based on a particular link to the land. Each individual and each clan was defined by a specific relationship to a valley, a hill, the sea or the mouth of a river, and each of these kept the imprint of other families that had lived there. The names traditionally given to each element of the landscape, the taboos associated with some of them and the customary paths provided a structure for space and relationships.

2. The colonization of New Caledonia was part of a vast historical process during which the European countries imposed their domination on the rest of the world.

Men and women arrived in great numbers in the nineteenth and twentieth centuries, convinced that they were bringing progress or inspired by their religious faith, sent against their will or seeking a second chance in New Caledonia. They settled there and founded their families. They brought with them their ideals, their knowledge, their hopes, their ambitions, their illusions and their contradictions.

Some of them – especially the educated, the priests and pastors, the doctors and engineers, the administrators, soldiers and political leaders – looked at the indigenous people differently, with greater understanding or genuine compassion.

In often very difficult conditions, the new populations in the Territory, with their scientific and technical knowledge participated in the development of mining and agriculture and, with the help of the State, in the shaping of New Caledonia. Their determination and their inventiveness made it possible to utilize the resources and lay the foundations for further development.

The relationship of New Caledonia to the distant metropolitan country was long marked by colonial dependence, a one-sided relationship and a refusal to recognize the specific aspects of the situation, as a result of which the aspirations of the new populations, too were frustrated.

3. The time has come to acknowledge the dark side of the colonial period, even though it was not entirely devoid of light.

The impact of colonization had a long-lasting traumatic effect on the indigenous population.

Some clans were deprived of both their name and their land. The large-scale colonization of land led to a considerable displacement of the population, in which the Kanak clans saw their means of subsistence depleted and their places of memory lost. This dispossession led to a loss of identity markers.

Kanak social organization, although its principles were recognized, was thrown into upheaval. Population movements destroyed its fabric, and ignorance or power strategies all too often led to a denial of the legitimate authorities and the setting up of authorities lacking customary legitimacy, which accentuated the identity trauma.

At the same time, the Kanak artistic heritage was denied or pillaged.

To compound this denial of the basic elements of the Kanak identity, restrictions were placed on the Kanaks' civil liberties and they had no political rights, even though they had paid a heavy toll in defence of France, especially during the First World War.

The Kanaks were relegated to the geographical, economic and political fringes of their own country; this situation could not help but provoke, in a proud people not without warlike traditions, revolts that were met with violent repression which aggravated the existing resentment and misunderstanding.

Colonization attacked the dignity of the Kanak people by depriving them of their identity. In this confrontation, some men and women lost their lives or their *raison d'être*. Great suffering resulted. It is appropriate to recall those difficult times, to recognize the errors committed and to restore to the Kanak people their confiscated identity, which in their view means to recognize their sovereignty, prior to the founding of a new sovereignty shared in a common destiny.

4. Decolonization is the means of re-establishing a lasting social bond between the communities living in New Caledonia today, allowing the Kanak people to establish new relations with France that correspond to modern realities.

Through their participation in the building of New Caledonia, the communities living in the Territory have acquired the legitimate right to live there and to continue to contribute to its development. They are essential to its social balance and to the functioning of its economy and social institutions. Although the Kanaks do not yet have sufficient access to positions of responsibility and that access must be increased by proactive measures, it is nonetheless true that the participation of the other communities in the life of the Territory is essential.

Today, the foundations for citizenship in New Caledonia must be established in a way that will allow the indigenous people, together with all the other men and women living there, to constitute a human community affirming its common destiny.

The size of New Caledonia and its economic and social imbalances make it impossible to open up the labour market fully, and justify measures to protect local employment.

The Matignon Accords, signed in June 1988, showed the willingness of the inhabitants of New Caledonia to turn their backs on violence and misunderstanding and to create a new life of peace, solidarity and prosperity together.

Now, 10 years later, the parties are determined to embark on a new stage, characterized by full recognition of the Kanak identity, prior to the reformulation of a social contract between all the communities living in New Caledonia, and by a sharing of sovereignty with France, on the way to full sovereignty.

The time for colonization was in the past. The present is the time for sharing and realignment. The future should be the time for expressing an identity in a common destiny.

France stands ready to accompany New Caledonia along this path.

5. The signatories to the Matignon Accords have therefore decided to work together towards a negotiated consensual solution, which they shall together submit to the inhabitants of New Caledonia for a decision.

This solution will define the political organization of New Caledonia and the arrangements for its emancipation over the next 20 years.

Its implementation will require a constitutional law, which the Government undertakes to draft with a view to its adoption by Parliament.

The full recognition of the Kanak identity involves clarifying customary law status and its relationship to the civil law status of persons under ordinary law, defining the place of customary structures in institutions, *inter alia* by establishing a customary Senate, protecting and enhancing the Kanak cultural heritage, introducing new legal and financial mechanisms to meet the demands that have been expressed on the grounds of ties to the land, while promoting land development, and adopting identity symbols expressing the essential place of the Kanak identity within the future community agreed upon.

The institutions of New Caledonia shall carry out the new stage of the transition to sovereignty; some of the decisions of the Territorial Congress shall have the force of law, and an elected territorial executive shall prepare and implement them.

During this period, indications shall be given of the progressive recognition of a citizenship of New Caledonia, which must reflect the common destiny chosen and which may become, at the end of the period, a nationality, should it be so decided.

The electorate for elections to local assemblies in New Caledonia shall be restricted to persons who have been resident in the Territory for a certain period of time.

In order to take into account the limited size of the labour market, provisions shall be made to promote access to local employment for persons who have been long-established residents of New Caledonia.

The sharing of powers between the State and New Caledonia shall signify shared sovereignty. This shall be a gradual process. Some powers shall be transferred as soon as the new organization takes effect. Other powers shall be transferred according to a definite schedule, which the Congress may modify, in accordance with the principle of self-organization. The powers that have been transferred may not revert to the State, in accordance with the principle of the irreversibility of the new organization.

Throughout the period of implementation of the new organization, New Caledonia shall receive State aid in the form of technical assistance and training and the funding necessary for the exercise of the powers transferred and for economic and social development.

Commitments shall be applied to multi-year programmes. New Caledonia shall have a share in the capital or the functioning of the primary development tools in which the State is a participant.

At the end of the 20 years period, the transfer of sovereign powers to New Caledonia, its access to the international status of full responsibility and the organization of citizenship by nationality shall be put to a vote of the populations concerned.

Their approval would be equivalent to full sovereignty for New Caledonia.

Policy document

1. The Kanak identity

The Kanak identity should be taken more broadly into account in the political and social organization of New Caledonia.

1.1. Special civil status

Although they do not want it, some Kanaks have civil status under ordinary law without having sought it.

Special civil status is a source of legal uncertainty and makes it impossible to respond satisfactorily to certain situations in modern-day life.

The following policies have therefore been established:

- Special civil status shall henceforth be called "customary status";
- Any person who could fall under customary status and who has surrendered it, or who has been deprived of such status following its surrender by his ancestors or by marriage or by any other cause (such as children whose births are registered in metropolitan France) may reclaim it. The Constitutional Revision Act shall authorize this derogation of article 75 of the Constitution;
- The rules on customary status shall be determined by the institutions of New Caledonia under the conditions set forth below;
- Customary status shall make a distinction between property located in the "customary land" (new name of the reserve), which shall be appropriated and passed on in the case of succession in accordance with the rules of custom, and property located outside the customary land, which shall be subject to the rules of ordinary law.

1.2. Customary law and structures

1.2.1. The legal status of the "palaver record" (the name of which may be changed) should be redefined to give it full legal force, by determining the form it should take and establishing an appeal procedure that would preclude any subsequent disputes. The role of the recorder of customary affairs, which is currently assumed by the police, shall be exercised by another agent, from the municipality or the customary area, for example. The form of the "palaver record" shall be specified by the Congress in agreement with the customary authorities (see below). The appeal shall be heard before the area council and the proceedings shall be recorded by the council or the office of the mayor.

1.2.2. The role of the customary areas shall be enhanced, particularly by giving the area councils a role in the clarification and interpretation of the customary rules. More generally, the spatial organization of New Caledonia should take broader account of their existence. In particular, municipal boundaries should be able to take area boundaries into account.

1.2.3. The system for the recognition of the customary authorities shall be determined with a view to guaranteeing their legitimacy. It shall be defined by the Customary Senate of New Caledonia (see below) and notified to the representative of the State and to the territorial Executive of New Caledonia, the role of which shall be confined to recording it. The status of the customary authorities shall be specified.

1.2.4. The role of the customary authorities in social welfare and mediation in criminal matters shall be recognized. Their role in the latter area shall be specified in the criminal procedure legislation applicable in New Caledonia. On the initiative of the provincial or municipal assemblies, the customary authorities may participate in the drafting of the decisions of the local assemblies.

1.2.5. The Customary Council of New Caledonia shall become a "Customary Senate", composed of 16 members (two from each customary area), which must be consulted on matters concerning the Kanak identity.

1.3. Cultural heritage

1.3.1. Place names

Kanak place names shall be listed and reinstated. Sites which are sacred under the Kanak tradition shall be identified and legally protected in accordance with the applicable rules concerning historical monuments.

1.3.2. Cultural items

The State shall encourage the return to New Caledonia of Kanak cultural items which are in museums or collections in metropolitan France or in other countries. The legal means available to the State for the protection of the national heritage shall be used to that end. Agreements shall be drawn up with such institutions for the return or constructive use of such items.

1.3.3. Languages

The Kanak languages, together with French, shall be the languages of instruction and culture in New Caledonia.

Their status in education and the media shall therefore be enhanced and given careful consideration.

Scientific research and university courses on the Kanak languages shall be organized in New Caledonia. In that connection, the National Institute of Oriental Languages and Civilizations shall play an essential role. With a view to ensuring that these languages find their proper place in primary and secondary education, considerable efforts shall be devoted to the training of instructors.

A Kanak language academy shall be established as a local institution with an administrative board composed of Kanak language speakers appointed in agreement with the customary authorities. It shall determine the rules for the use and development of Kanak languages.

1.3.4. Cultural development

The Kanak culture shall be enhanced in art education and in the media. Copyright shall be effectively protected.

1.3.5. The Tjibaou Cultural Centre

The State shall undertake to provide long-term technical assistance and the necessary funding to the Tjibaou Cultural Centre so that it may fully assume its role as an outreach centre for the Kanak culture.

In connection with all such questions of cultural heritage, the State shall propose to New Caledonia the conclusion of a special agreement.

1.4. Land

The identity of every Kanak shall be defined primarily with reference to land.

The role and working conditions of the Agence de développement rural et d'aménagement foncier (Rural and Land Development Agency) (ADRAF) shall undergo a thorough reassessment. It should have sufficient resources to take action in suburban areas. Measures accompanying land grants should be strengthened so as to facilitate the settlement of those allotted land, as well as the development of the land.

Customary land shall be surveyed and registered so that customary rights over plots of land can be clearly identified. New legal and financial instruments shall be established to promote the development of customary land, the status of which must not stand in the way of its development.

Land reform shall be pursued. Customary land shall consist of reserves, land allocated to "*groupements de droit particulier local*"(groups covered by special local law provisions) (GPDL) and land allocated by ADRAF in response to claims made on the basis of ties to the land. All land will therefore be either customary land or land held under ordinary law. Leases shall be established by the Congress, in agreement with the Customary Senate, with a view to defining relations between customary landowners and developers of customary land. Ordinary law courts, with customary assessors, shall have jurisdiction over disputes.

Land belonging to the State or to the Territory shall be considered from the perspective of the allocation of these areas of land to other communities or to customary or private owners, with a view to restoring rights or achieving development in the common interest. The question of the maritime zone shall also be considered in the same spirit.

1.5. Symbols

The identifying signs of the country, such as its name, flag, anthem, currency and banknote designs, shall be jointly devised in order to express both the Kanak identity and the future to be shared by all.

The Constitutional Act on New Caledonia shall provide for the possibility of a change of name through a "law of the country" adopted by a qualified majority (see below).

The name of the country may be placed on identity documents as a sign of citizenship.

2. Institutions

One of the principles of the political agreement is the recognition of New Caledonian citizenship, which reflects the chosen common destiny and which could, following the end of the period of application of the Accord, be organized on the basis of nationality, should it be so decided.

During this period, the concept of citizenship shall form the basis of restrictions placed on the electorate for elections to the country's institutions and for the final referendum. It shall also serve as a reference for the implementation of provisions to be specified with a view to protecting local employment.

This shall be permitted under the Constitutional Act.

2.1. Assemblies

2.1.1. The provincial assemblies for the Loyalty Islands, the North and the South shall be composed respectively of 7, 15 and 32 members, who shall also be members of the Congress, and of 7, 7 and 8 additional members who shall not be members of the Congress at the time the institutions

are established. For subsequent terms of office, the provincial assemblies may reduce the number of members who are not members of the Congress.

2.1.2. The term of office of members of the Congress and the provincial assemblies shall be five years.

2.1.3. Some decisions of the Congress shall have the status of laws of the country, in which case they may be challenged only before the Constitutional Council, prior to their publication, by the representative of the State, the territorial Executive of New Caledonia, the president of a provincial assembly, the President of the Congress or one third of the members of the Congress.

2.1.4. (a) It shall be mandatory for draft laws of the country and draft decisions to be referred to the Customary Senate when they concern the Kanak identity as defined in this document. When the draft legislation to be submitted to it has the status of a law of the country and concerns the Kanak identity, the Congress of New Caledonia shall reconsider it if the vote of the Customary Senate has not endorsed it. The vote of the Congress shall then be final.

(b) An economic and social council shall represent the main economic and social institutions of New Caledonia. It must be consulted on all the economic and social decisions of the Congress. It shall be composed of representatives of the Customary Senate.

2.1.5. The boundaries of the provinces and municipalities should coincide so that a commune belongs to only one province.

2.2. The electorate and the electoral system

2.2.1. The electorate: The electorate for the referendums on the political organization of New Caledonia to be held once the period of application of this Accord has ended (section 5) shall consist only of: voters registered on the electoral rolls on the dates of the referendums provided for under section 5 who were eligible to participate in the referendum provided for in article 2 of the Referendum Act, or who fulfilled the conditions for participating in that referendum; those who are able to prove that any interruptions in their continuous residence in New Caledonia were attributable to professional or family reasons; those who have customary status or were born in New Caledonia and whose property and personal ties are mainly in New Caledonia; and those who, although they were not born in New Caledonia, have one parent born there and whose property and personal ties are mainly in New Caledonia.

Young people who have reached voting age and are registered on the electoral rolls and who, if they were born before 1988, resided in New Caledonia from 1988 to 1998, or, if they were born after 1988, have one parent who fulfilled or could have fulfilled the conditions for voting in the referendum held at the end of 1998, shall also be eligible to vote in these referendums.

Persons who, in 2013, are able to prove that they have resided continuously in New Caledonia for 20 years may also vote in these referendums.

As provided for in the signed text of the Matignon Accords, the electorate for elections to the provincial assemblies and the Congress shall be restricted to voters who fulfilled the conditions for voting in the 1998 referendum; those registered on the supplementary roll who will have fulfilled a 10-years residence requirement on the date of the election; and voters who reach voting age for the first time after 1998 and who can either prove that they have had 10 years of residence in 1998 or that they had one parent who fulfilled the conditions for voting in the referendum at the end of 1998 or had one parent registered on the supplementary roll and can therefore prove that they have resided in New Caledonia for 10 years as of the date of the election.

The concept of residence shall have the meaning ascribed to it in article 2 of the Referendum Act. The roll of voters entitled to participate in the referendums shall be closed before the end of the year preceding the referendum.

The restricted electorate system shall apply to communal elections if the municipalities are to be organized in a manner that is specific to New Caledonia.

2.2.2. In order to ensure the efficient functioning of the local assemblies by avoiding the consequences of scattered votes, the threshold of 5 per cent shall apply to the number of registered voters, not to the number of votes cast.

2.3. The territorial Executive

The territorial Executive of New Caledonia shall become a collegial Government, elected by and answerable to the Congress.

The territorial Executive shall be appointed by the Congress, on the basis of proportional representation, from lists of candidates (who may or may not be members of the Congress) put forward by political groupings. Membership of the Government shall be incompatible with membership of the Congress or the provincial assemblies. Any member of the Congress or of a provincial assembly who is appointed to the Government shall be replaced in the corresponding assembly by the next-ranking candidate on the list. If he leaves the Government, he shall regain his seat.

The composition of the territorial Executive shall be determined by the Congress.

The representative of the State shall be informed of the agenda for meetings of the Government and shall attend its deliberations. He shall receive the drafts of decisions before they are published and may request a second reading by the territorial Executive.

2.4. Municipalities

The powers enjoyed by the municipalities in the areas of urban planning, local development, electricity supply concessions and local taxation may be expanded. Public land may be transferred to the municipalities.

3. Powers

The powers held by the State shall be transferred to New Caledonia in the following manner:

- Some powers shall be transferred as soon as the new political organization goes into effect;
- Other powers shall be transferred during subsequent stages;
- Still other powers shall be shared between the State and New Caledonia;
- Residual, sovereign powers may be transferred only after the referendum referred to in section 5.

The Congress, by a qualified majority of three fifths, may ask to amend the timetable laid down for the devolution of powers, with the exception of sovereign powers.

The State shall, during this period, share the costs of the powers that have been transferred. Such cost-sharing shall be guaranteed by the Constitution Act.

3.1. The new powers conferred on New Caledonia

3.1.1. Powers to be transferred immediately

The principle of devolution of powers shall apply as soon as the institutions provided for under this Accord have been set up: this shall take place during the first term of the Congress.

- *Right to employment*: New Caledonia shall put in place, in coordination with the State, measures to provide special guarantees for the right of its inhabitants to employment. Regulations on the entry of persons not established in New Caledonia shall be strengthened.

In the case of self-employed persons, the right to set up business may be restricted for persons not established in New Caledonia.

In the case of private sector wage-earners and the Territory's civil service, local regulations shall be drawn up to give the Territory's inhabitants preferential access to employment.

- Right of foreign nationals to employment;
- Foreign trade, including import regulations, and authorization of foreign investments;
- External postal and telecommunications services, with the exception of government communications and the regulation of radio frequencies;
- International navigation and shipping services;
- External air services when their only stopover in France is in New Caledonia, subject to compliance with France's international commitments;
- Exploration, development, management and conservation of the living and non-living natural resources of the economic zone;
- Guiding principles of labour law;
- Guiding principles of vocational training;
- Customary mediation in criminal law;
- Determination of penalties for breaches of the laws of the country;
- Rules governing the administration of the provinces;
- Primary education curricula, teacher training and inspection of teachers;
- Public maritime areas transferred to the provinces.

3.1.2. Powers to be transferred at a subsequent stage

At a subsequent stage, during the second and third terms of the Congress, the following powers shall be transferred to New Caledonia:

- Civil registration rules, within the framework of existing legislation;
- Policing and security rules for domestic air and sea traffic;
- Drafting of rules and implementation of measures concerning civil defence. However, a system shall be set up enabling the representative of the State to take the necessary measures where these are lacking;

- Accounting and financial regulations for local authorities and their public institutions;
- Civil and commercial law;
- Guiding principles of land ownership and real property rights;
- Legislation on juvenile delinquents and children at risk;
- Rules on the administration of communes;
- Administrative oversight of local authorities and their public institutions;
- Secondary education;
- Rules applicable to private school teachers under contract.

3.2. Shared powers

3.2.1. International and regional relations

International relations shall be the responsibility of the State, which shall take New Caledonia's specific interests into account in any international negotiations conducted by France and shall involve the Territory in such discussions.

New Caledonia may become a member or associate member of certain international organizations, according to their regulations (international organizations in the Pacific region, the United Nations, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO), etc.). The progress made in the emancipation process shall be brought to the attention of the United Nations.

New Caledonia may have representation in countries of the Pacific region and at the above-mentioned organizations and the European Union.

It may enter into agreements with those countries within its areas of competence.

It shall take part in the renegotiation of the decision on the association between Europe and the overseas countries and territories.

Training programmes shall be conducted to prepare New Caledonians for the exercise of responsibilities in the area of international relations.

The relations between New Caledonia and the territory of the islands of Wallis and Futuna shall be dealt with in a special agreement. State services in New Caledonia shall be organized differently from those in this territory.

3.2.2. Aliens

The territorial Executive of New Caledonia shall participate in the implementation of regulations relating to the entry and stay of aliens.

3.2.3. Broadcasting

The territorial Executive shall be consulted by the *Conseil supérieur de l'audiovisuel* (French broadcasting authority) prior to any broadcasting decisions pertaining specifically to New Caledonia.

This authority and New Caledonia may conclude an agreement on the latter's association with the former's broadcasting policy.

3.2.4. Maintenance of law and order

The representative of the State shall inform the territorial Executive of the measures taken in this regard.

3.2.5. Mining regulations

The State's reserved powers with regard to fuel oils, potassium salts, nickel, chromium and cobalt shall be transferred to the Territory.

Responsibility for the elaboration of regulations shall be transferred to New Caledonia and responsibility for their implementation shall be transferred to the provinces.

A mining authority composed of representatives of the provinces, whose meetings shall be attended by the representative of the State, shall be consulted with respect to draft decisions of the Congress or of the provinces which relate to mining issues. If this authority disagrees with such decisions or if the representative of the State opposes them, the territorial Executive of New Caledonia shall decide the matter in question.

3.2.6. International air services

The territorial Executive shall take part in negotiations on issues in respect of which competence has not been fully transferred to New Caledonia.

3.2.7. Higher education and scientific research

The State shall involve the territorial Executive in the preparation of contracts linking it to research institutions established in New Caledonia and to the University, in order to ensure that the specific needs of New Caledonia are more fully taken into account in the areas of higher education and research. New Caledonia may enter into agreements with such institutions concerning their policy and objectives.

3.3. Sovereign powers

Justice, law and order, defence and currency (including credit and exchange), as well as foreign affairs (subject to the provisions of section 3.2.1), shall remain the responsibility of the State until such time as the new political organization is introduced following the referendum referred to in section 5.

In the meantime, New Caledonians shall be trained and involved in the exercise of responsibilities in these areas, for the purpose of realignment and preparation for the next stage.

4. Economic and social development

4.1. Human resources development

4.1.1. The content and methods of training programmes shall be geared more closely to local realities, the regional environment and the imperatives of the realignment process. Discussions shall be undertaken with States of the Pacific region with a view to providing for the mutual recognition of qualifications and training. The new system of power-sharing should enable more New Caledonians to serve as trainers.

The University shall focus on meeting the specific training and research needs of New Caledonia.

The Institute for the Training of Administrative Personnel shall be transferred to New Caledonia.

4.1.2. A programme to train middle and upper management personnel, particularly in the technical and financial fields, shall be supported by the State through development contracts, to prepare for current and future transfers of power.

A specific programme involving secondary, higher and vocational education, which will follow up the "400 Managers" programme, will pursue the aims of realignment and prepare the Kanaks to accede to responsibilities in all sectors of activity.

4.2. Economic development

4.2.1 Multi-year development contracts shall be concluded between the State and New Caledonia, the provinces and any of the municipalities, and shall be aimed at increasing economic autonomy and diversification.

4.2.2. Mining

A plan for the development of the Territory's mineral resources shall be drawn up. New Caledonia shall supervise its implementation, through the gradual transfer of responsibilities for the drafting and implementation of mining regulations.

4.2.3. Energy policy shall pursue the objectives of autonomy and realignment through the identification of sites for hydroelectric power generation and rural electrification programmes, taking into account the cost differentials linked to the geography of the Territory. Operators in this sector shall be involved in the implementation of this policy.

4.2.4. Financing of the economy needs to be modernized.

The territorial Executive shall be consulted with respect to decisions on monetary policy. New Caledonia shall be represented in the competent bodies of the currency-issuing institution.

The Capital Investment Institute of New Caledonia shall retain its current role and functions in respect of development financing. A guarantee fund shall be established to help finance development projects on customary land.

Development objectives in the public interest shall be set for the Investment Bank of New Caledonia. Local governments may, within the limits of their powers, support the development of enterprises in cooperation with the banking sector.

A specific mechanism shall be established to facilitate the restructuring and recovery of enterprises.

4.3. Social policy

4.3.1. Efforts to expand and improve public housing shall be pursued with the cooperation of the State. The allocation of funds and the selection of operators should help to improve the geographical balance. A distinction shall be made between the roles of collector, promoter and manager of the public housing stock.

4.3.2. A generalized social security system shall be introduced.

4.4. Control of the tools of development

In the course of the new stage which is now beginning, New Caledonia shall be put in a position to gain adequate mastery of the main tools for its development. Where the State directly or indirectly has total or partial control of these tools, it shall be replaced by New Caledonia according to modalities and timetables to be determined. When New Caledonia so desires, French public corporations operating solely in New Caledonia shall become New Caledonian public corporations.

Among the corporations involved are the Postal and Telecommunications Service, the Institute for the Training of Administrative Personnel, the New Caledonian Power Company (ENERCAL), the Capital Investment Institute of New Caledonia, the Rural Development and Land Management Agency and the Kanak Cultural Development Agency.

When agencies operate not only in New Caledonia, the latter must be in a position where it can promote its strategic policies for New Caledonia through participation in the capital or in the governing body.

5. Evolution of the political organization of New Caledonia

A referendum shall be held during the fourth (five-year) term of the Congress. The date of this referendum shall be determined by the Congress during that term by a qualified majority of three fifths of its members.

If the Congress has not set this date before the end of the penultimate year of the fourth term, the referendum shall be held, on a date set by the State, during the last year of the term.

The referendum shall deal with the transfer of sovereign powers to New Caledonia, access to an international status of full responsibility and the organization of citizenship by nationality.

If the response of the electorate to these proposals is negative, one third of the members of the Congress may call for the organization of another referendum to be held during the second year following the first referendum. If the response is once again negative, a further referendum may be held following the same procedure and with the same time-frame. If the response is yet again negative, the political partners shall meet to consider the situation thus created.

Until the proposed new political organization has been approved in a referendum, the political organization established by the 1998 Accords shall remain in force, in its last stage of evolution, without any possibility of regression, "irreversibility" being constitutionally guaranteed.

The result of the referendum shall apply comprehensively to New Caledonia as a whole. It shall not be possible for one part of New Caledonia alone to accede to full sovereignty or to retain different links with France on the grounds that the results of the referendum in that part of New Caledonia differed from the overall results.

The State recognizes that New Caledonia is to achieve complete emancipation by the end of this period.

6. Implementation of the Accord

6.1. Legislation

The Government shall undertake the preparation of the legislation necessary for the implementation of the Accord and, in particular, the draft constitutional reform act with a view to its adoption by Parliament. In the event that this reform cannot be achieved and if the constitutional changes required for the implementation of the provisions of the Accord cannot be made, the partners shall meet to consider the consequences for the overall balance of this Accord.

6.2. Consultations

On the initiative of the signatories, consultations shall take place in New Caledonia to discuss the agreement which has been reached with political, customary, economic and social organizations.

6.3. 1998 referendum

A referendum shall be held before the end of 1998 on the political organization of New Caledonia, the subject of this Accord.

Under the Constitution Act of New Caledonia, only voters who were eligible to participate in the referendum provided for in article 2 of the Act of 9 November 1988 shall be allowed to participate.

6.4. Elections to the provincial assemblies and to the Congress

Elections to the provincial assemblies and to the Congress shall be held during the six months following the adoption of legislation relating to the political organization of New Caledonia.

The terms of office of the members of the provincial assemblies shall end on the date of those elections.

6.5. Committee of signatories

A committee of signatories shall be established to:

- Take into account the views to be expressed by the local organizations consulted on the Accord;
- Participate in the drafting of the legislation necessary for the implementation of the Accord;
- Monitor the implementation of the Accord.

The above documents, consisting of the preamble and the policy document, have been approved by the partners to the Matignon Accords, marking the end of the negotiations which took place in the presence of Mr. Dominique Bur, representative of the Government, High Commissioner of the Republic.

The partners shall proceed to inform those concerned and hold the consultations required prior to the signing of these documents by the Prime Minister and the signatories on 5 May 1998.

For FLNKS	For the Government its representatives in New Caledonia	For RPCR
Rock **Wamytan**	Alain **Christnacht**	Jacques **Lafleur**
Paul **Neaoutyine**	Thierry **Lataste**	Pierre **Frogier**
Charles **Pidjot**		Simon **Loueckhote**
Victor **Tutugoro**		Harold **Martin**
		Jean **Leques**
		Bernard **Deladriere**

in the presence of

Dominique **Bur**